Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

HUMBERTO RODRIGUEZ,

Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Whether the appellate court, on its own initiative, may rule that the Petitioner lacked standing to mount his fourth amendment claim where the issue went unchallenged by the State both at the trial court level and in its brief on appeal.

II. Whether the fact that the arresting officer, Officer Granias, was under federal investigation for falsifying facts in at least two search warrant affidavits concerning information that he claimed to have received from certain confidential informants about narcotics activity at the locations for which he sought the search warrants was relevant to the officer's credibility at the hearing on the motion to quash arrest and suppress evidence and therefore a proper area of cross-examination by defense counsel.

III. Whether the confidential informant's reliability and basis of knowledge were relevant to the probable cause determination and therefore a proper area of cross-examination by defense counsel.

PARTIES INVOLVED

The parties to the proceedings below were Humberto Rodriguez, Defendant-Appellant in 93-3450, Saleem Muhammed, co-defendant, and the State's Attorney's Office for Cook County, Plaintiff-Appellee in 93-3450.

The parties to this petition are Petitioner, Humberto Rodriguez, and the Respondent, People of the State of Illinois through Attorney General for the State of Illinois, James E. Ryan.

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I. Certiorari should be granted because the appellate court's ruling that the Petitioner lacked standing to mount his fourth amendment claim-an issue that went unchallenged by the State both at the trial court level and in its brief on appeal-violates the Petitioner's rights to be secure against unreasonable searches and seizures and to the due process of law.

II. Certiorari should be granted because the trial court's ruling prohibiting Petitioner from cross-examining the arresting officer, Officer Granias, about the fact that he was under federal investigation for falsifying facts in at least two search warrant affidavits concerning information that he claimed to have received from certain

confidential informants about narcotics activity at the locations for which he sought the search warrants denied Petitioner his rights to cross examine witnesses and to the due process of law.

III. Certiorari should be granted because the trial court's ruling prohibiting Petitioner from questioning the arresting officers about the veracity, reliability and basis of knowledge of their confidential informant denied Petitioner his rights to be secure against unreasonable searches and seizures and to the due process of law.

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Appendix A: Order of the Illinois Appellate Court, First Judicial District, Second Division, December 29, 1995 affirming the judgment of the Circuit Court.

Appendix B: Order of the Illinois Supreme Court denying Petition for Leave to Appeal.

Appendix C: Order of the Supreme Court of the United States Allowing Application for Extension of Time Within Which to File a Petition for Writ of Certiorari.

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IN THE

SUPREME COURT OF THE UNITED STATES

HUMBERTO RODRIGUEZ, Petitioner

vs.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

Petitioner Humberto Rodriguez respectfully requests that a writ of certiorari issue to review the judgment and order of the Appellate Court of Illinois entered on December 29, 1995, affirming petitioner's conviction for possession of a controlled substance with intent to deliver.

OPINION BELOW

The order of the Illinois Appellate Court, First District was not published pursuant to Illinois Supreme Court Rule 23. The order is reprinted in Appendix A, attached hereto and incorporated herewith.

Petitioner unsuccessfully sought leave to appeal to the Illinois Supreme Court, and a copy of the notice denying him leave to appeal is attached as Appendix B.

JURISDICTION

The final judgment of the Illinois Appellate Court, First District, in *People v. Humberto Rodriguez*, was entered in an order filed on December 29, 1995. Petitioner's petition for leave to appeal to the Illinois Supreme Court was denied on June 5, 1996.

The jurisdiction of this Court to review the judgment of the Illinois Appellate Court is invoked under 28 U.S.C. Section 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT IV

The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for

obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On January 16, 1991, a confidential informant spoke over the phone to Chicago Police Officers Thomas Granias and Anthony Opiola, both of whom were assigned to the Drug Enforcement Administration (DEA). The informant revealed that between 6:00 and 6:30 p.m. that evening a man named Pepito would drive a red and white Blazer to the area of 4224 North Ashland where he was to pick up 20 kilos of cocaine.

The officers traveled to Ashland and Irving Park Road where they met with the informant. After repeating what had been stated on the telephone, the informant added that the red and white Blazer had no license plates and that Pepito was a Hispanic male, 6 feet tall, 250 pounds and wearing a lot of gold. Officers Granias and Opiola then called the DEA. They wanted to set up a surveillance and needed more officers.

A little more than one half hour after the surveillance of 4224 North Ashland had been set up, Officer Opiola spotted a red and white Blazer with no license plates driving nearby. The Blazer, which was being followed by a blue Ford Explorer, turned into an alley just off Ashland Avenue. Both vehicles parked behind 4224 North Ashland.

Alone, and on foot, Officer Granias entered the alley. The Blazer was empty but co-defendant Saleem Muhammed was sitting in the driver's seat of the Explorer. Granias walked past the vehicles and entered the

stairwell of a nearby building. Through the windows, he watched.

According to Granias, what he saw through the windows was the Petitioner walking from the vicinity of the rear of 4224 North Ashland, carrying a blue nylon gym bag. Granias did not see the Petitioner in the building at 4224 North Ashland but he did see that the gym bag was zippered shut.

The Petitioner went to the driver's side of the Explorer and handed Mr. Muhammed the bag at which time, Granias claims that, from inside the stairwell of a nearby building and through the window, he heard the Petitioner tell Mr. Muhammed to "be careful." The Petitioner then returned to his Blazer and both he and Mr. Muhammed drove away.

Granias radioed his brother officers, alerting them to the fact that Petitioner and Mr. Muhammed were leaving. Opiola followed Petitioner and Granias followed Muhammed. Granias lost sight of Muhammed for a short period, but found him again at 3100 North Ashland. Granias claimed that he walked up to Muhammed's vehicle which was stopped for a red light, tapped on the window, and displayed his police identification. Muhammed rolled down his window. As Muhammed began talking to Granias, Granias claimed that he noticed the blue gym bag that he had seen Petitioner hand to Muhammed earlier. According to Granias, this gym bag which had previously been zippered shut and which would soon be found to contain a large quantity of cocaine was

now open and perched on the seat next to Muhammed. While the bag was not open enough for Granias to see inside and recognize the actual contents of the bag, Granias explained that the bag was open enough for him to observe a clear rectangular package with "Star 500" written on it, which, given his experience, told him that the bag contained cocaine.

Granias seized the bag and field tested its contents. It tested positive for cocaine. He radioed Opiola who immediately placed Petitioner under arrest.

Petitioner was charged with possession of a controlled substance with intent to deliver. Prior to trial, Petitioner filed a motion to quash arrest and suppress evidence. Officers Granias and Opiola testified as defense witnesses. The substance of their testimony was consistent with the above. The trial court denied the motion.

Following denial of the motion, counsel for Petitioner received *Brady v. Maryland* material from the federal government in a criminal case unrelated to Petitioner's matter. This *Brady* material involved a federal grand jury investigation into allegations that Officer Granias had on at least two prior occasions perjured himself regarding the existence of informants. Based on this material, counsel for Petitioner filed a motion for reconsideration of the denial of the motion to quash arrest and suppress evidence and to strike the testimony of Officer Granias. The motion was denied.

Defendant's trial proceeded by way of stipulation, after which he was sentenced to 15 years imprisonment in the Illinois Department of Corrections.

Defendant appealed his conviction. On appeal to the Illinois Appellate Court, First District, he argued that the trial court erred in preventing him from questioning Officer Granias about his informant's basis of knowledge, in finding that the State had proven his guilt beyond a reasonable doubt; and in preventing him from questioning Officer Granias about the allegations that Officer Granias had on at least two prior occasions perjured himself regarding the existence of informants.

In a fourteen page order, the Illinois Appellate Court rejected the Petitioner's arguments and affirmed his conviction. As part of its ruling, however, the appellate court noted that the denial of the Petitioner's motion to quash arrest and suppress evidence was proper because the Petitioner lacked standing. The appellate court, on its own initiative, raised this issue. The State argued standing neither at the motion to quash arrest nor in its appellee's brief.

Petitioner unsuccessfully petitioned the Illinois Supreme Court for leave to appeal. Following rejection of that petition and a granting of an application for extension of time by this Court to file a petition for writ of certiorari, Petitioner filed the instant petition.

REASONS FOR GRANTING CERTIORARI

I. The appellate court's ruling that the Petitioner lacked standing to mount his fourth amendment claim-an issue that went unchallenged by the State both at the trial court level and in its brief on appeal-conflicts with this Court's decisions in both *Combs v. U.S.*, 408 U.S. 224, 33 L.Ed.2d 308, 92 S.Ct. 2284 (1972) and *Steagald v. U.S.*, 451 U.S. 204, 68 L.Ed.2d 38, 101 S.Ct. 1642 (1981).

In *Combs*, this Court ruled that the Court of Appeals erred in concluding that the Petitioner lacked the requisite standing to mount his fourth amendment claim. *Combs*, 408 U.S. at 228. Petitioner's standing had never been challenged and therefore he had never been made to argue the issue. Poignantly, this Court observed that

> "petitioner's failure to make any such assertion [regarding a possessory or proprietary interest in the searched area], either at the trial or at the pretrial suppression hearing, may well be explained by the related failure of the Government to make any challenge in the District Court to petitioner's standing to raise his Fourth Amendment claim." *Id.* at 311.

The fairness of the principle recognized in *Combs* can also be sensed in this Court's decision in *Steagald v. U.S.*. In *Steagald*, this Court expressly rejected the Governments efforts to raise the issue of standing for the first time on appeal. *Steagald*, 451 U.S. at 450, 451.

Noting that the argument had never been raised by the Government in the courts below, this Court announced that the Government

> "may lose its right to raise factual issues of this sort [standing] before this Court when it has made contrary assertions in the courts below, when it has acquiesced in contrary findings by those courts, or when it had failed to raise such questions in a timely fashion during the litigation." *Id.* at 209.

The lesson from *Combs* and *Steagald* teaches that the decision reached by the Illinois Appellate Court in the Petitioner's case went too far. The record in Petitioner's case makes amply clear that the issue of Petitioner's standing to make his fourth amendment claim was never challenged by the State. The State did not argue against standing at the trial court level nor did it make such an argument on appeal. This stands in sharp contrast to *Combs* as well as *Steagald* where the Government argued the standing issue for the first time in its brief to this Court.

By ruling against the Petitioner in its order, the appellate court has effectively excused the State's failure to act and has stepped into the shoes of the State as an advocate for the People. While the appellate court is charged with the duty of reviewing the actions taken by the respective parties at the trial court level, that duty does not extend to acting as a surrogate for such parties.

Furthermore, it is not clear that the appellate court has not presumed too much. It is not clear that, in fact, the State's decision to refrain from objecting on standing grounds was not a tactical decision or because it, too, like the Petitioner, believed that standing was not in issue. The Petitioner, who sought to assert his fourth amendment rights in an instance where it appeared to him that a violation had occurred, must not be held to argue both his side and that of the State. The message that is sent by the appellate court's order is that the accused who seeks to vindicate his rights under the fourth amendment must now not only produce evidence in support of his position as well as answer to the challenges made by the government, but must also anticipate and answer to those challenges not made by the government.

Finally, by picking apart the Petitioner's arguments and finding fault where the Petitioner's opponent—the State—did not even see fit to mount a challenge and then ruling against the Petitioner, the appellate court has added insult to injury. The appellate court has ruled against the Petitioner on an insufficient record without even considering, as was mentioned in *Combs,* that what may appear as a deficiency in the record in regards to the factual determination of standing "may well be explained by the related failure of the Government to make any challenge," to the Petitioner's standing. *Combs,* 408 U.S. at 227.

Had the Petitioner been challenged by the State regarding the standing issue then he would have been able to produce whatever evidence he had available in support

of standing. But by ruling against the Petitioner on an issue that had gone uncontested in the courts below and without allowing him the benefit of producing whatever evidence he may have available, the appellate court has demonstrated that fairness and equity in the litigation of our constitutional rights are a reasonable price to be paid for the convenience that comes with finality in the decision making process.

The Petitioner does not ask that the merits or lack thereof of his fourth amendment claim be assumed or overlooked but rather that he simply be allowed the opportunity to fully and fairly litigate them.

II. The appellate court's ruling that the trial judge did not abuse his discretion in preventing counsel for the Petitioner from cross-examining Officer Granias about the fact that he was under federal investigation for falsifying facts in at least two search warrant affidavits concerning information that he claimed to have received from certain confidential informants about narcotics activity at the locations for which he sought the search warrants conflicts with the opinion of the District of Columbia Circuit Court of Appeals in *U.S. v. Hodge* as well as the principles of the accused's right to cross-examination as articulated in this Court's opinions in *Chambers v. Mississippi* and *Delaware v. Van Arsdall*. *U.S. v. Hodge*, 19 F.3d 51 (D.C. Cir. 1994); *Chambers v. Mississippi*, 410 U.S. 284, 35 L.Ed.2d 297, 93 S.Ct. 1038 (1973); *Delaware v. Van Arsdall*, 475 U.S. 673, 89 L.Ed.2d 674, 106 S.Ct. 1431 (1986).

The right to cross-examine witnesses has long been recognized as essential to due process. *Chambers,* 410 U.S. at 294. It is more than a desirable rule of procedure. It is implicit in the constitutional right of confrontation, and helps assure the accuracy of the truth-determining process. *Id.* at 295. Its denial or significant diminution calls into question the ultimate integrity of the fact-finding process. *Id.*

The right to cross-examine includes the opportunity to test the witness' recollection, to probe into the details of his testimony or to sift his conscience so that the finder of fact might judge for itself whether the witness' testimony is worthy of belief. *Id.* Further, the exposure of a witness' motivation or bias in testifying is a proper and important function of the constitutionally protected right of cross-examination because it exposes to the jury the facts from which jurors could appropriately draw inferences relating to the reliability of the witness. *Van Arsdall,* 475 U.S. at 680.

The court in *Hodge* well understood these principles of cross-examination. It remanded the case to the district court for a new evidentiary hearing on the defendant's motion to suppress for the exact reason that he had not been allowed to sufficiently crossexamine the arresting officers. *Hodge,* 19 F.3d at 53.

At issue in *Hodge* was whether the police had violated Hodge's rights under the fourth and fourteenth amendments by searching his bag. The defense tried repeatedly to question the officers on matters relevant to

the question of whether the search of the defendant's bag was proper. The trial court, however, sustained each objection made by the Government. Id. at 52, 53.

On appeal, the Circuit Court of Appeals for the District of Columbia ruled that the District Court had improperly limited the defense cross-examination. *Id.* at 53. The court noted that while the Government had the burden of proving that the search was reasonable within the context of the fourth amendment, "the defendant had the right to cross-examine the government's witnesses" because "a suppression hearing is a critical stage of the prosecution affecting substantial rights of the accused." *Id.* The court ruled that because the testimony that the defense sought to elicit through cross-examination was relevant to the issues raised in the motion to suppress, the limitations imposed by the District Court on that cross-examination had denied the defendant his right to cross-examination. *Id.*

The logic of the *Hodge* decision compels a similar result when applied to the facts in Petitioner's case. Officer Granias, the arresting officer, was under federal grand jury investigation at the time of the hearing on the motion to quash arrest and suppress evidence in this matter. The allegations against him were that he had misrepresented facts in at least two search warrant affidavits concerning information that he claimed to have received from certain confidential informants about narcotics activity at the locations for which he sought the search warrants.

In an unrelated case in the United States District Court, Northern District, Illinois, Granias informed the court that he would exercise his fifth amendment privilege should the suppression hearing in that case be reopened and he be questioned about the federal investigation. As a consequence, his testimony was stricken.

The significance of the federal grand jury investigation to Petitioner in this matter flows directly from the similarities between the two situations. Granias was under investigation for falsifying search warrant affidavits as they pertained to information he claimed to have received from confidential informants. Similarly, here, he claimed that it was the information he received from a confidential informant that drew his attention to the Petitioner and Mr. Muhammed. Certainly, this cannot be dismissed out-of-hand as mere coincidence which is the path that the appellate court chose to follow. Whether the allegations in the federal investigation were founded or unfounded, allowing defense counsel to cross-examine Granias was necessary to "assure the accuracy of the truth-determining process" in this case. *Chambers*, 410 U.S. at 295. It was essential to making a reliable assessment of Granias' credibility.

The allegation that Granias may have misrepresented facts in the past to "make a case" bears directly on the facts that he testified to in Petitioner's case. Only cross-examination could yield a satisfactory answer to the question of whether he had misrepresented facts to "make a case" against the Petitioner. If Granias could have been shown to lack credibility on the issue of the

informant in Petitioner's case, his credibility on all of the other points testified to would have similarly been thrown into doubt.

The credibility of Officer Granias was of the utmost importance. It was the key to the State's case. The State's case against Petitioner was built exclusively on the testimony of Granias. Granias and only Granias was privy to the alleged actions and statements of Petitioner and Mr. Muhammed in the rear area behind 4224 North Ashland. Without the benefit of corroboration of the claimed observations and in light of the striking similarities between the allegations against Granias in the federal investigation and the facts of this case, it is too much to ask that Granias' testimony be pardoned from the only meaningful method of assuring the accuracy of the truth - determining process: cross-examination.

The defense in this case should have been allowed the opportunity to cross-examine Officer Granias about the allegations made in the federal grand jury investigation because they bore directly on the credibility of the State's most important witness, without whom, proving guilt beyond a reasonable doubt would not have been possible.

III. The appellate court's ruling that the confidential informant's reliability and basis of knowledge were irrelevant to the probable cause determination and that the trial court was therefore justified in prohibiting defense counsel from questioning the officers about these issues stands in sharp contrast to the decisions of this Court in *Ornelas v. U.S.* and *Illinois v. Gates. Ornelas v. U.S.*, 517

U.S.____, 134 L.Ed.2d 911, 116 S.Ct. (1996); *Illinois v. Gates*, 462 U.S. 213, 76 L.Ed. 2d 527, 103 S.Ct. 2317 (1983).

In *Ornelas*, this Court identified the framework within which a determination of reasonable suspicion or probable cause must be made.

> "The principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer amount to reasonable suspicion or probable cause." *Ornelas*, 134 L.Ed.2d at 919.

The importance of the historical facts in this case, wherein Officer Granias claims to have received information from what he refers to as a confidential informant which eventually leads him to the Petitioner, to the determination of probable cause can best be seen in light of the teachings in *Gates*.

Under *Gates*, the standard for determining whether the facts in question add up to probable cause is the totality of the circumstances. *Gates*, 462 U.S. at 238. However, when the question is whether the story of an informant establishes probable cause, the veracity, reliability, and basis of knowledge of the informant are all

highly relevant factors to be included in the totality of circumstances mix. *Id.* at 230-234.

What these cases demonstrate is that the appellate court in Petitioner's case failed to see the big picture. The appellate court skipped part one of the *Ornelas* analysis and jumped right to part two-application of the rule of law to the facts. The appellate court missed completely the development of the historical facts which led up to the arrest now under challenge.

The proper view for the appellate court, as well as the trial court, to have taken was to consider the historical facts of this case in light of Granias' informant's veracity, reliability and basis of knowledge. After all, the facts that led up to the Petitioner's arrest cannot be divorced from the information allegedly supplied to Officer Granias by his confidential informant. Without that information, not only would Granias' attention not have been drawn to Petitioner in the first place, but, even if by chance, Granias had stumbled across Petitioner and Mr. Muhammed in the rear area of 4224 North Ashland, Granias would not have known what significance to attach to the activity he claims to have observed.

Preventing the Petitioner from exploring, through cross-examination of the police officers, the veracity, reliability and basis of knowledge of the informant effectively deprived the court and, consequently, the Petitioner, of highly relevant evidence on the issue of whether probable cause to arrest existed. This was damaging to the truth-determining process as a whole but

also was easily avoidable. The officers, themselves, testified that they were aware of the basis of their informants knowledge. This was not a situation where the officers simply received an anonymous phone call at the district police station. No, this was quite different. The officers not only spoke to the informant at length over the telephone from the DEA offices, but they met the informant in person near the area where Petitioner would later be arrested. In their own words, the officers acknowledged that they were aware of the informant's basis of knowledge. Further, the record of what transpired between the officers and the informant confirms the same. The trial court, nevertheless, ruled that cross-examination into this area would not be allowed.

The appellate court goes on to render its stamp of approval to the trial court's efforts to justify the limitations it imposed on the Petitioner's cross-examination of the officers. In order to avoid the question of whether the informant's veracity, reliability and basis of knowledge were relevant to the probable cause determination, the trial court simply decided, and the appellate court agreed, to judge the person who provided information to Officer Granias not as an informant, in which case veracity, reliability and basis of knowledge would be in issue, but rather as a tipster. That way, no one, especially, the court, would have to concern themselves with such bothersome concepts as veracity, reliability and basis of knowledge; all that would need be done is ascertain whether corroboration exists and if so, then one could in good conscience infer that the information is reliable, thereby achieving a swift conclusion to the analysis.

Characterizing the provider of information in the Petitioner's case as a tipster rather than as a reliable source or confidential informant was simply not an option for the court. The officers, themselves, refer to the provider of information as their "confidential informant." And, curiously enough, the appellate court also adopts this designation on the first page of its order.

Further, the facts of the case demonstrate that the provider of information to Officer Granias was more than a simple tipster. He was a "confidential informant", just as the officers described. He contacted them at the DEA and even took it a step further by meeting with the officers in the area in question, supplementing the information that he had provided over the phone, and discussing with them the basis of his knowledge.

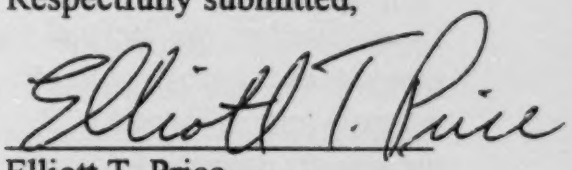
While it was possible for the court to have inferred certain things from the information provided by the informant, the court should not have been allowed to stop there. If that were all that was possible, then the position urged by Petitioner would be different. However, here, the court could have and should have allowed Petitioner's counsel to delve deeper into the veracity, reliability and basis of knowledge of the informant inasmuch as these issues dictated the perspective from which the historical facts leading up to the arrest should have been scrutinized.

For these reasons, the Petitioner respectfully requests that certiorari be allowed.

CONCLUSION

For the foregoing reasons, Petitioner Humberto Rodriguez respectfully prays that a writ of certiorari issue to review the judgment of the Illinois Appellate Court, First District.

Respectfully submitted,



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APPENDIX A:

ORDER OF ILLINOIS APPELLATE COURT, FIRST JUDICIAL DISTRICT, SECOND DIVISION, DECEMBER 29, 1995 A-1 to A-13

APPENDIX B:

ILLINOIS SUPREME COURT DENIAL OF PETITION FOR LEAVE TO APPEAL B-1

APPENDIX C:

SUPREME COURT OF THE UNITED STATES NOTIFICATION OF ALLOWANCE OF APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI C-1

APPENDIX A:

ORDER OF ILLINOIS APPELLATE COURT,
FIRST JUDICIAL DISTRICT, SECOND
DIVISION, DECEMBER 29, 1995

THE PEOPLE OF THE STATE OF ILLINOIS,	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY,
Plaintiff-Appellee,	)	CRIMINAL DIVISION.
v.	)	No. 91 CR 4485
HUMBERTO RODRIGUEZ,	)	THE HONORABLE DENNIS DERNBACH
Defendant-Appellant.	)	JUDGE PRESIDING.

ORDER

The following evidence was adduced at a hearing on motions to quash their arrest and suppress evidence filed by Humberto Rodriguez ("defendant") and Saleem Muhammed ("co-defendant").[1]

On January 16, 1991, at 4:30 p.m., Chicago police officers Thomas Granias and Anthony Opiola, assigned to the Drug Enforcement Administration (DEA), engaged in a telephone conversation from the DEA office with a "confidential informant" who told them that someone named "Pepito" would be arriving at 4224 North Ashland

[1]Co-defendant is not a party to this appeal.

in a red and white Blazer to pick up "20 kilos" of cocaine that evening around 6:00 or 6:30 p.m. that day.

Shortly following this telephone conversation, Granias and Opiola met the informant at Ashland Avenue and Irving Park Road. During the meeting, the informant described "Pepito" as a male Hispanic, 40 or 45 years old, six feet tall, 250 pounce and wearing "a lot of gold's jewelry." The informant also stated that the red and white Blazer that "Pepito" would be driving did not have any license plates.

At 5:40 p.m. that day, Granias and several other officers arranged surveillance of 4224 North Ashland, which turned out to be an apartment building. Granias testified that at 6:25 or 6:30 p.m., a red and white Blazer with no plates drove into an alley and parked in one of the parking spaces behind the apartment building. A blue Ford Explorer followed the Blazer and pulled into a parking space next to the Blazer. Granias exited his vehicle and walked down the alley into a stairwell where he positioned himself so that he could watch the cars through a window.

He saw co-defendant sitting in the Explorer. Although nothing in the record indicates whether he saw defendant enter the building, Granias testified that he watched as defendant emerged from the rear of the apartment building carrying a blue nylon gym bag. Defendant fit the description of "Pepito" as described by the informant. The officer observed defendant walk to the driver's side of the Explorer and hand the bag to co-defendant. Granias heard defendant say, "be careful" as he

handed over the bag. Defendant then got into the Blazer and drove away from the apartment building.

At that point, Granias radioed the other surveillance officers to inform them of what he had just witnessed. Officer Opiola followed defendant. Officer Granias followed co-defendant in his car as he drove down Ashland. When co-defendant was stopped at a red light on Ashland at School Street, Granias pulled up behind him, exited his car, and approached co-defendant's car on the driver's side and tapped on the window. Granias saw the blue nylon gym bag on the seat with the zipper open about ten inches. In the bag, Granias saw a "rectangular package with the word[s] "Star 500" on it. According to Granias, he immediately knew it was a package of cocaine because he had seen a similar package with the word "Star" printed on it at the DEA office two weeks prior to this incident and learned that it was a brand name used by a "producer" in Columbia. Granias immediately put co-defendant under arrest.

Granias seized the blue bag and opened one of the packages in order to see what was inside. After opening the package, Granias radioed Opiola that he confiscated twenty duct tape-wrapped packages of "suspect cocaine". Opiola, who, as stated earlier, had been following defendant, pulled him over and arrested him at 6:40 p.m.. No contraband was seized from defendant.

During the hearing on their motions to quash and suppress, defendants attempted to question Granias and Opiola about the identity of the informer and how the

informer obtained his information. Granias and Opiola acknowledged that they knew the basis of the informer's information, but the State argued that how the informer got his information would disclose his identity and put him in danger. After a review of the case law cited by co-defendant's counsel, specifically, *Alabama v. White* (1990), 496 U.S. 325, 110 L. Ed. 2d 301, 110 S. Ct. 2412 and *Illinois v. Gates* (1983), 462 U.S. 213, 76 L. Ed. 2d 527, 103 S. Ct. 2317, the trial court determined that it would consider the informant as a "tipster" and not an informer. Accordingly the judge ruled that defendants were not permitted to inquire into the tipster's reliability, nor did the officers have to answer questions about his identity or the basis of his information. After the judge's ruling, defendants requested that the State produce the tipster for questioning or, in the alternative, for an *in camera* interview by the trial judge, but the State's objections to defendants' requests were sustained.

At the conclusion of the hearing, the court denied defendants' motions. Thereafter, defense counsel learned of federal grand Jury proceedings involving an investigation of Officer Granias. Although the record is unclear, Granias appears to have been under investigation for allegedly obtaining search warrants based on information he falsely claimed he received from an informer. According to a letter from the U.S. Attorney's office, the allegations at issue in the grand jury proceeding were as follows:

> "[I]n each affidavit, Officer Granias averred that he had received information from a

> confidential informant that narcotics-related activity had taken place at the location for which each search warrant was sought * * * [the informant] advised the government that s/he did not provide the information described in the complaints for search warrant."

There in no evidence that the informant referred to in the grand jury investigation in the same one involved in the instant case. Based on the information furnished by the U.S. Attorney, defendant moved to reopen the cross-examination of Granias in order to discredit his testimony regarding the information he received from his tipster. Several months passed while defendant was attempting to secure further information regarding the grand Jury proceedings. When the circuit court determined that the trial should proceed, Granias had not been formally indicted or convicted.[2] Despite defendant's objections, the trial judge chose to proceed because he did not want defendant to sit in jail while awaiting the result of the grand Jury investigation. Additionally, the judge learned that if recalled to the stand, Granias would not exercise his Fifth Amendment rights regarding the tipster at issue in this case, although he would invoke the Fifth Amendment if he was asked about the informer related to the grand jury proceedings. At a bench trial in which the parties stipulated to the evidence produced at the hearing on the

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[2]There is nothing in the record to indicate whether the officer was ever indicted or convicted.

motions to quash and suppress, defendant was sentenced to fifteen years in the custody of the Department of Corrections, with credit for time served, having been found guilty of possession of a controlled substance with intent to deliver more than 900 grams of cocaine under the provisions of the Illinois Criminal Code of 1961, Ill. Rev. Stat. of 1991, Ch. 56 ½ § 1402 A-2-D (now codified at 720 ILCS 570/402(a)(2)(D)).

Defendant appeals his conviction claiming that the trial court erred in excluding evidence of the tipster's basis for the information he furnished to the police; in finding defendant guilty beyond a reasonable doubt; and in refusing to allow defendant to cross examine Officer Granias regarding the federal grand jury's investigation of how he goes about obtaining search warrants.

Defendant argues that during the hearing on his motion to quash his arrest and suppress evidence, he should have been permitted to inquire into the reliability of the tipster and his information. To find probable cause, the trial court must determine whether "a reasonable and prudent man, having the knowledge possessed by the officer at the time of the arrest, would believe the defendant committed the offense." (*People v. Tiller* (1984), 103 Ill. 2d 226, 237, 469 N.E.2d 147 quoting *People v. Wright* (1968), 41 Ill. 2d 170, 174.) Whether the necessary probability exists is governed not by technical legal rules, but rather by commonsense considerations that are factual and practical. (*People v. Mitchell* (1970), 45 Ill. Id 148, 153-54, 258 N.E.2d 345, cert. denied (1970), 400 U.S. 882, 27 L.Ed. 2d 120, 91 S. Ct. 117; **overruled in**

part on other grounds *People v. Laws* (1981), 84 Ill. 2d 493, 419 N.E.2d 1150.)

Probable cause clearly existed to arrest defendant based on the mere fact that the police saw him hand co-defendant a bag, found a short time later to be filled with cocaine, and tell co-defendant to "be careful"[3] A "reasonable and prudent" person with Officer Granias's knowledge that the white substance contained in the bag was cocaine could, with great justification, believe that defendant had committed a crime by having had the cocaine in his possession and handing it over to co-defendant. (See *People v. Jones* (1994), 269 Ill. App. ad 797, 635 N.E.2d 961, **appeal denied**, (1995) 159 Ill. 2d 574, 647 N.E.2d 1013 (Probable cause existed to seize defendant where informer told police that drugs would be delivered to defendant, and police witnessed someone remove a red bag from the trunk of a car, remove a bag filled with powder, and hand the bulging red bag to defendant)). Here, the tipster's reliability was clearly irrelevant since probable cause was easily established without having to resort to his information; therefore, the trial court did not err in prohibiting defendant from questioning the officers about the tipster's basis for that information. See *People v. Peoples* (1993) 155 Ill. 2d 422, 456, 616 N.E.2d 294, *cert. denied* 126 L. Ed 2d 578, 114 S. Ct. 613 (The admissibility of evidence is dependent

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[3]It is important to note that it was only after Granias determined that the bag contained cocaine that he radioed Opiola with instructions to arrest defendant.

upon a showing that it is legally relevant); *People v. James* (1987), 118 Ill. 2d 214, 222, 514 N.E.2d 998, cert. denied (1988), 484 U.S. 1045, 98 L. Ed. 2d 866, 108 S. Ct. 780; *People v. Tisler,* 103 Ill. Id at 236-37, 469 N.E.2d 147 (If the facts supplied in an informant's tip are essential to a finding of probable cause, the tip must meet standards of reliability before it can be considered in determining probable cause). Moreover, the reasons for the trial court's barring the inquiry sought by defendant are of no moment, for a court of review may affirm on any basis supported by the record. *Estate of Johnson v. Condell Memorial Hospital* (1988), 119 Ill. 2d 496, 502, 520 N.E.2d 37.

Defendant also argues that in connection with his motion to suppress, he should have been permitted to question the officers about the tipster's basis for the information he supplied to them. However, defendant overlooks that the cocaine was seized from co-defendant; therefore, he lacked standing to assert co-defendant's constitutional right against unlawful seizure. (*People v. McNeil* (1972), 53 Ill. 2d 187, 290 N.E.2d 602). In *McNeil*, a case in which defendant sought to suppress evidence seized in an allegedly unlawful search of property owned by a co-defendant, the supreme court held that pursuant to the holding in *Alderman v. United States* (1969), 394 U.S. 165, 22 L. Ed. 2d 176, defendant had no standing to assert a Fourth Amendment right against unlawful searches and seizures because such rights are "personal rights" and cannot be "vicariously asserted." (*McNeil,* 53 Ill. 2d at 190-191, 290 N.E.2d 602). "[T]he defendant must show", the supreme court declared, "how his constitutional rights have been violated in order to

have standing to challenge the validity of a search or seizure." (*McNeil*, 53 Ill. 2d at 191.) Accordingly, inasmuch as cocaine in the case *sub judice* was found in co-defendant's car and defendant was not on the premises when the search was conducted, we can safely conclude that defendant did not have standing to maintain a motion to suppress the evidence. *Johnson*, 119 Ill. 2d 496, 502, 520 N.E.2d 37 (Court of review may affirm on any basin supported by the record).

Furthermore, although in light of the result we have already reached we need not discuss the point, we can readily agree with the trial court that for the purposes of defendant's motion to quash his arrest and suppress the evidence, the tipster's information can properly be considered a "tip" instead of information from a "reliable source". Under these circumstances, substantial corroboration is sufficient to establish an informant's veracity and to permit an inference that the information is reliable. (*People v. Tisler*, 103 Ill. 2d at 251, 469 N.E.2d 147.) The proper focus is "whether the actions of the suspects, whatever their nature, give rise to an inference that the informant is credible and that he obtained his information in a reliable manner.'" (*People v. Tisler*, 103 Ill. 2d at 251, 469 N.E.2d 147, quoting *Illinois v. Gates*, 462 U.S. at 269, 76 L. Ed. 2d at 568, 103 S. Ct. at 2348 (White, J., concurring)). Therefore, as long as there exists substantial corroboration of the information, the tipster's basis for the information is irrelevant.

In the instant case, the tipster stated that a male Hispanic, 40 or 45 years of age, six feet tall, 250 pounds,

wearing "a lot of gold" jewelry would be picking up cocaine at 4224 North Ashland in a red and white Blazer with no license plates around 6:00 or 6:30 p.m.. In fact, such a person, driving such a car arrived at such a location at the indicated time. Furthermore, Officer Granias observed defendant emerge from the apartment building, carrying a bag, and heard him say, "be careful" as he handed the bag to co-defendant. Because all of the tipster's detailed information was more than sufficiently corroborated, it was reasonable for the trial court to infer the tipster's veracity and the reliability of the information, and to deny defendant the opportunity to question the tipster's basis for the information. *People v. Tisler,* 103 Ill. 2d 226, 469 N.E.2d 147.

Defendant argues that he was not guilty beyond a reasonable doubt because there was insufficient evidence of defendant's knowledge that the contents of the gym bag were contraband. In order to prove that defendant is guilty of possession of drugs, the State must establish that defendant had knowledge that the object he possessed was drugs. (*People v. Embry* (1960), 20 Ill. 2d 331, 334, 169 N.E.2d 767). Sufficiency of the evidence to sustain a conviction on review is determined by whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (*Jackson v. Virginia* (1979), 443 U.S. 307, 61 L. Ed. 2d 560, 99 S. Ct. 2781; *People v. Collins* (1985), 106 Ill. 2d 237, 478 N.E.2d 267 *cert. denied* (1985), 474 U.S. 935, 88 L. Ed. Id 274, 106 S. Ct. 267.) All evidence is reviewed in a light most favorable to the prosecution.

(*People v. Roppo* (1992), 234 Ill. App. ad 116, 125, 599 N.E.2d 974 *appeal denied* (1992), 146 Ill. 2d 646, 606 N.E.2d 470). Defendant acknowledges that in order to reverse a criminal conviction, a reviewing court must find that the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of defendant's guilt. (*People v. Sutherland* (1992), 155 Ill. 2d 1, 17, 610 N.E. Id 1, *cert. denied* (1993), 126 L. Ed. 2d. 130, 114 S. Ct. 170). Defendant also recognizes that because knowledge is rarely proven directly, it may be demonstrated by circumstantial evidence. *People v. Cristantos* (1991), 211 Ill.App. 3d 870, 570 N.E.2d 843, See *Embry,* 20 Ill. 2d at 334, 169 N.E.2d 767 (Knowledge may be proven by evidence of "acts, declarations, or conduct of the accused from which the inference may be fairly drawn that he knew of the existence of the narcotics * * *").

Defendant maintains, however, that no evidence was presented regarding his knowledge of the contents of the blue bag because the only evidence against him was that he was seen coming from the rear of the apartment building carrying the bag and that he admonished co-defendant as he handed him the bag to "be careful". On the other hand, the State cites *People v. Birge* (1985), 137 Ill. App. ad 781, 485 N.E.2d 37 for the proposition that the trier of fact is permitted to infer knowledge of the presence of drugs if a large amount is involved. *Birge,* 137 Ill. App. ad at 790, 485 N.E.2d 37, citing *People v. Luetkemever* (1979), 74 Ill. App. ad 708, 393 N.E.2d 117, cert. denied (1980), 446 U.S. 938, 64 L. Ed. 2d 791, 100 S. Ct. 2157 (Three hundred pounds of cannabis was found

on premises leased by defendant and occupied by defendant on a part time basis).

The cocaine in the blue gym bag had an approximate street value of $1,610,987.70. A cargo of such worth; one can reasonably infer under the circumstances surrounding the transaction in this cane, does not ordinarily come into the possession of a person ignorant of its being contraband. In light of these circumstances, and the foregoing citation of authorities, the trial court could fairly infer that defendant had knowledge that the bag possessed cocaine; therefore his guilt was established beyond a reasonable doubt.

As a final matter, defendant argues that he should have been permitted to cross examine Officer Granias regarding the federal grand jury investigation. As stated earlier, after the hearing on defendant's motion to quash and suppress, defendant discovered that Granias was the subject of a grand Jury investigation because, according to allegations lodged against him, he falsified information about an informer in affidavit he used to obtain search warrants. There is nothing in the record to indicate that Granias was indicted or convicted as a result of the investigation. Although the record indicates that if asked about the informer involved in the investigation, Granias would exercise his Fifth Amendment rights, he would not invoke those rights if he were asked about the tipster involved in the instant case.

The trial court has discretion to determine the manner and scope of cross examination (*People v. Dortch*

(1982), 109 Ill. App. ad 761, 441 N.E.2d 100, *cert. denied Dortch v. Cohn* (1989), 490 U.S. 1049, 104 L. Ed. 2d 429, 109 S.Ct. 1961) and its decision to limit the scope of cross examination will not be reversed absent an abuse of discretion resulting in prejudice to the defendant. *People v. Sandoval* (1990), 135 Ill. 2d 159, 552 N.E.2d 726, *cert. denied* (1990), 498 U.S. 938, 112 L. Ed. 2d 307, 111 S. Ct. 343.

Because we find that the issue of the tipster is irrelevant as to whether probable cause existed to arrest defendant and as to whether the cocaine was properly seized insofar as it relates to the case against defendant, we hold that the trial judge did not abuse his discretion in limiting the scope of cross examination; therefore, defendant's argument is without merit. Moreover, it is also important to note that Officer Granias' testimony regarding the informer was corroborated by Officer Opiola, who, based on the record, was not under any investigation.

For all of the foregoing reasons, the judgment of the circuit court in affirmed.

Affirmed.

SCARIANO, P.J., with DIVITO, J., and BURKE, J., concurring.

APPENDIX B:

ILLINOIS SUPREME COURT
DENIAL OF PETITION FOR
LEAVE TO APPEAL

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

June 5, 1996

Mr. Elliott T. Price
Attorney at Law
One No. LaSalle St. - #4600
Chicago, IL 60602

No. 80530 - People State of Illinois, respondent, v. Humberto Rodriguez, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on June 27, 1996.

APPENDIX C:

SUPREME COURT OF THE UNITED STATES
NOTIFICATION OF ALLOWANCE OF
APPLICATION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION
FOR A WRIT OF CERTIORARI

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

September 11, 1996

Mr. Elliott Price
One North LaSalle Street
Suite 4600
Chicago, IL 60602

Re: *Humberto Rodriguez v. Illinois*
Application No. A-177

Dear Mr. Price:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on September 11, 1996, extended the time to and including November 1, 1996.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By

Sandra Elliott Spagnolo
Assistant Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

NOTIFICATION LIST

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